

**STATE OF MONTANA STANDARD LEASE CONTRACT -- COUNTIES --**

Last revised 2004

**1. PARTIES**

This lease #6416-A is entered into by and between the Montana Department of Corrections, located at 1539 11<sup>th</sup> Avenue, Helena, Montana, 59620, hereinafter referred to as "Department" and Big Horn County, a political subdivision of the State of Montana, located at 121 West Third, Hardin, Montana, 59034, hereinafter referred to as "Contractor".

**2. PURPOSE OF LEASE**

The Department has a need to lease premises in Hardin, Montana for the specific purpose of conducting Department business. The Contractor has premises available for lease which are suitable for the stated purpose.

**3. PREMISES DESCRIPTION**

The area to be leased consists of 362 square feet and includes the right to use the common areas within the leased premises. The leased area is more particularly described as room #308. The leased area is located in the County Courthouse building at 121 West Third, in Hardin, Montana.

**4. TERM OF LEASE**

The term of this lease shall be two (2) years, beginning on the 1<sup>st</sup> day of July, 2008, and terminating on the 30<sup>th</sup> day of June, 2010, unless earlier terminated as provided in sections 14, 19, 20, and 21 of this lease or renewed as provided in section 5.

**5. RENEWAL OPTION**

This agreement may be renewed by the mutual consent of Contractor and Department for a successive two (2) year period by the following procedure:

The Contractor may notify the Department at least one hundred and twenty (120) days prior to the lease expiration date of its intent not to renew the lease, and the lease shall terminate at the end of the lease period. In the event the Contractor fails to notify the Department of its intent to not renew the lease, the Department may request lease renewal at least thirty (30) days prior to the lease expiration date.

If the Contractor rejects the request to renew within ten (10) days of the lease expiration date, the lease shall not be renewed. In the event the Contractor notifies the Department of such rejection within said ten (10) days, the Department may holdover in the leased premises for up to one hundred and twenty days (120) days following receipt by the Department of notification of rejection.

In the event the Contractor fails to notify the Department of its rejection, the Contractor shall be presumed to have accepted the request to renew the lease under the same terms and conditions.

## **6. CONSIDERATION**

The Department shall make annual payments to the Contractor in the amount of \$2,982.88. This reflects a rate of \$8.24 per square foot per year. The Contractor may request that the Department make lease payments according to a different payment schedule.

The Department shall pay the Contractor rent due by the 10th of the month that any rent payment is due. Payment shall be made by written check.

## **7. UTILITIES AND SERVICES**

The Contractor shall furnish and pay all utilities including: water, gas, electricity, garbage removal, and sewage charges. The Contractor shall also replace all light bulbs, fluorescent tubes and other lighting elements at its expense and shall do so within seven (7) working days after notification of needed replacement.

Any increase in the number of telephone, electrical or computer network lines or change in location shall be done, with Contractor approval, at the Department's expense.

At its own expense, Contractor shall provide janitorial services and all supplies consistent with janitorial services provided for other portions of the premises. This service shall provide, at a minimum:

### Daily

Cleaning all bathrooms, including toilet and lavatory bowls  
Refilling paper towel and toilet tissue dispensers  
Emptying all trash containers

### Weekly

Disposing of materials specified by the Department

### Bi-Weekly

Vacuuming carpets  
Dusting furniture  
Mopping floors

### As needed, but not less than semi-annually

Waxing floors  
Shampooing carpets  
Washing interior windows  
Cleaning light fixtures

## **8. PARKING SPACE**

The Contractor shall provide public parking spaces for the Department's employees, including the requisite number of handicapped parking spaces to comply with the

Americans with Disabilities Act as part of the leased premises at no additional charge or cost to the Department.

#### **9. PARKING AREA AND SIDEWALK MAINTENANCE**

The Contractor shall keep the parking area and sidewalks in good repair, and shall timely remove snow and ice from the parking area and sidewalk.

#### **10. NOTICE PROTOCOL**

Any notice or demand required or permitted to be given under this lease must be in writing. Written notice shall be deemed given when hand delivered, or when mailed by first class mail, postage prepaid, to the addresses specified in this section.

The Contractor's address for purposes of receiving notice or demand is Big Horn County, PO Box 908, Hardin, Montana, 59034.

The Contractor's representative for purposes under this lease is the Board of Commissioners, telephone (406) 665-9700.

The Department's address for the purpose of receiving notice is, Montana Department of Corrections, 2615 4<sup>th</sup> Avenue South, Billings, Montana 59107.

The Department's representative for purposes under this lease is John Williams, telephone (406) 896-5400.

If either party changes its address or contact person, it must notify the other party in writing at the address provided in this section.

#### **11. QUIET ENJOYMENT**

The Department, shall peaceably and quietly have, hold and enjoy the leased premises and all rights, easements, covenants, and privileges belonging or in any way appertaining thereto, during the term of this lease. The Department also agrees the Contractor and its employees are entitled to peaceably have, hold, and enjoy the remainder of the premises which have not been rented by Department.

#### **12. INSPECTION**

The Department shall permit upon prior notice, the Contractor or its agent to enter into and upon the premises at all reasonable times to maintain or inspect the building in which the leased premises are located or to make repairs, alterations or additions to any portion of the building, including, but not limited to, the erection and maintenance of scaffolding, canopies, fences or props as may be needed. In the event of an emergency, Contractor may enter the premises without prior notice to the Department. Contractor shall have 24-hour access to the leased premises to perform janitorial services pursuant to section 7 of this lease.

### **13. MAINTENANCE OF PREMISES**

The Contractor shall, at its own cost and expense, make repairs, keep the leased premises in a fit and usable condition and maintain in good working order and condition the exterior of the premises including the roof, the interior, all fixtures, and all related electrical, plumbing, sanitary, heating, ventilating, and air-conditioning owned by the Contractor.

### **14. CASUALTY OR FIRE DAMAGE**

In the event the leased premises becomes twenty-five percent (25%) or more destroyed or made uninhabitable by fire or other casualty, or if the premises are condemned by a proper authority, this lease may be terminated by either party.

If the premises are less than twenty-five percent (25%) destroyed or made uninhabitable by fire or other casualty, the rent shall be reduced by the proportion of the premises that have been rendered uninhabitable or declared unsafe. For purposes of this section, other casualty includes but is not limited to vandalism.

If the premises are not restored, or cannot be restored, and returned to proper condition for use and occupancy within thirty (30) days of the casualty, the Contractor or the Department may terminate the lease upon ten (10) days written notice to the other party.

Upon written notice of termination pursuant to this section, the Contractor shall refund any unearned rent paid and the Department shall have no further obligation to the Contractor under this lease. Contractor shall continue to insure the premises until the Department's personal property is removed from the premises. The Department shall have 30 days after termination of this lease to remove its property from the premises.

### **15. ALTERATIONS TO PREMISES**

The Department agrees to make no substantial alteration to the premises without the prior written consent of the Contractor. Permanent improvements or alterations shall remain the property of the Contractor at the termination of the lease. Fixtures, including but not limited to cubicles, shall remain the property of the Department.

The Department shall surrender the premises at the end of the lease term, or any extension thereof, in a condition substantially similar to the condition of the premises at the commencement of the lease, notwithstanding alterations agreed to by the Contractor, reasonable wear and tear alone excepted.

### **16. SIGNS**

If Contractor allows signage and the Department wishes to advertise its location in the building, Department shall pay the Contractor for installation of a suitable sign on the exterior of the premises at a location mutually agreeable to the Contractor and Department.

**17. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

The Contractor agrees to protect, defend, and save the Department, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, and subcontractors under this lease.

The Department also agrees to assume the same duties and responsibilities specified above in defending and holding the Contractor and its elected and appointed officials, agents, and employees harmless from all claims or causes of action arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Department and/or its agents, employees, representatives, assigns, and subcontractors.

**18. INSURANCE SPECIFICATIONS**

At its sole cost and expense, Contractor shall maintain property insurance upon the leased premises and Contractor fixtures for the term of the lease against the following hazards:

Loss or damage by fire and such other risks (not including earthquake damage) in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis. This may be insured against by attachment of standard form extended coverage endorsement to fire insurance policies.

Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.

Loss or damage by explosion of steam boilers, pressure vessels, and oil or gasoline storage tanks, or similar apparatus now or hereafter installed in a building or buildings on the premises.

The Contractor shall also purchase Occurrence coverage with combined single limits of \$1 million per occurrence / \$2 million aggregate per year or when provided by statutory Tort limits of \$750,000 / claim, \$1,500,000 / occurrence as provided by the MACo/JPIA property and liability self-insured pool coverage. This insurance must be from an insurer licensed to do business in Montana or by a domiciliary state and with a Best's rating of no less than A- or by a public entity self-insured program either individually or on a pool basis as provided by Title 2, MCA.

*Department shall maintain its own insurance on the contents of the leased premises and its own property and Contractor shall not be liable for any damage done to or loss of personal property belonging to Department or its employees or for damage or loss suffered by the business or occupation of the Department arising from any acts or neglect*

*of Department, its employees, or other occupants of the leased premises. Department agrees to carry public liability insurance for bodily injury and property damage in which the limits of liability shall not be less than \$750,000 for each claim and \$1,500,000 for each occurrence.*

#### **19. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS**

The Contractor and Department each respectively understand that they are bound by applicable state and federal law and local ordinances. This includes, but is not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, PL 101-336, Section 504 of the Rehabilitation Act of 1973, the Montana Safety Culture Act **and 18-5-401, MCA et seq. concerning the Blind Enterprise Program's vending facility rules.**

The Contractor agrees to provide an additional alternative accessible site, other than the leased premises, for use by the Department in the event it is necessary to provide services, benefits, or communication to individuals with a disability. In the event an alternative ADA site is not available or economically feasible for the Contractor to provide within thirty (30) days of a written request thereof by the Department, the Department may terminate the lease with a thirty (30) day written notice.

The Department and Contractor respectively agree to conform to all rules and regulations adopted under the Montana Safety Act and the Act itself. The Department and Contractor further agree to comply with the ordinances and laws of the City of Hardin, and the State of Montana, affecting the use of the premises and to assume all legal responsibility for any charges or damages for non-observance.

The Contractor agrees to provide the Department of Administration, the Legislative Auditor, the Legislative Fiscal Division, and their authorized agents access to any records relating to this lease and will create and retain records relating to the lease for a period of three (3) years from lease termination or the conclusion of any claim, litigation or exception relating to the lease or a time period established by the local government records retention committee, whichever is longer.

#### **20. ENVIRONMENTAL HAZARDS**

The Contractor represents that, to the best of its knowledge, any use, storage, treatment or transportation of hazardous substances which has occurred in or on the premises prior to the lease date has been in compliance with all applicable federal, state and local laws, regulations and ordinances.

The Contractor further represents that, to the best of its knowledge, no release, leak, discharge, spill, disposal or emission of hazardous substances has occurred in, on or under the premises and that the leased premises are free of hazardous substances as of the lease date.

If either party to this agreement discovers that a release, leak, discharge, spill, disposal or emission of hazardous substances has occurred in, on or under the premises or that the

premises are not free from hazardous substances, the party shall immediately notify the other party.

If the Department determines at any time that the leased premises pose a significant environmental hazard to its employees, the Department may terminate the lease with a written thirty (30) day notice.

## **21. TERMINATION**

The Contractor acknowledges, understands, and agrees that the Department, as a state agency, is dependent upon state and federal appropriations for its funding. In the event state or federal government funds available for this purpose are reduced, the Department may terminate this lease by giving thirty (30) days written notice to the Contractor.

The Department shall not be liable to the Contractor for any amount which would have been payable had the lease not been terminated under this provision. The Department shall be liable to the Contractor only for the amount owed to the Contractor up to the date the Department vacates the premises.

The failure of either party to this lease to fully perform under any or all of the terms and conditions shall constitute a breach of this lease, entitling the non-defaulting party to take any and all such action as may be provided by law.

Any breach or default alleged under this lease shall be occasioned by a thirty (30) day written notice of the same to the defaulting party. If at the end of such thirty (30) day period, the defaulting party has not cured the breach, the non-defaulting party may take any and all such actions as may be provided by law.

At the expiration or termination of this lease or any extension of it, the Department will vacate and surrender the premises to the Contractor in as good condition and repair as when it took possession, reasonable wear and tear excepted. All property and fixtures placed in the premises by the Department or owned by the State of Montana may be removed by the Department within thirty days of termination.

## **22. SEVERABILITY**

It is understood and agreed by the parties hereto that if any term or provision of this lease is held to be illegal, void or in conflict with any Montana law, the validity of the remaining terms and conditions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if this lease did not contain the particular term, condition, or provision held to be invalid.

## **23. VENUE AND INTERPRETATION**

The Contractor and Department agree that this lease shall be governed and interpreted according to the laws of the State of Montana. In the event of a dispute arising over this lease, the proper venue for the hearing of the case is the District Court of the First Judicial District of the State of Montana, in and for the County of Lewis and Clark. Each party shall be responsible for its own attorney's fees and costs.

**24. SUCCESSORS**

All rights and liabilities herein given to and or imposed upon both parties shall extend to, be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**25. LEASE APPROVAL**

This entire lease, in addition to any change, alteration, renewal, addendum, amendment, or letter of understanding is subject to prior approval of the Department of Administration.

**26. ENTIRE LEASE**

This Agreement, consisting of nine ( 9) pages, sections 1 through 28 contains the entire contract between the Department and the Contractor. Any lease hereafter made shall not be effective to modify this lease unless such agreement is in writing and signed by the Contractor, the Department, and the Department of Administration.

**27. SUBLEASE**

If the Department would like to assign or sublet the leased premises, the Department shall first offer the leased premises back to the Contractor. If the Contractor does not agree to resume control of the leased premises and to discharge the Department's obligations under the lease, the Department agrees that it will not assign or sublet in whole or part any portion of the leased premises without the prior written consent of the Contractor. If the Contractor withholds consent, the Department's obligations under this lease shall be discharged.

**28. SMOKE FREE ENVIRONMENT**

The Contractor shall make the portions of the building occupied by state agencies smoke-free. "Smoke" means smoke from a lighted cigar, cigarette, or pipe or any other lighted tobacco product as defined in MCA 50-40-202.



IN WITNESS WHEREOF, the Contractor and the Department have entered into and executed this lease.

**BOARD OF COUNTY COMMISSIONERS**

By: [Signature] Date: 7-7-08

By: [Signature] Date: 7-7-08

By: [Signature] Date: 7-7-08

(MUST BE SIGNED BY AT LEAST TWO COMMISSIONERS)

[Signature] Date: 7-17-08  
Approved for legal content  
County Attorney

**PARTIES TO THE LEASE**

By: [Signature] 6-26-08  
Mike Ferriter, Director  
Department of Corrections  
Date

**APPROVED BY:**

By: [Signature] June 20, 2008  
Garett M. Bacon  
Leasing Officer, Department of Administration, General Services Division  
Date

By: [Signature] June 23, 2008  
Mike Manion  
Department of Administration Chief Legal Counsel  
Date

By: [Signature] 6/26/08  
David Ewer  
OBPP Director/Designee  
Date

By: [Signature] 6/30/08  
Janet R. Kelly  
Director, Department of Administration  
Date